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COMMERCE COMMISSION

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Commonwealth Edison Company )  
 )  
Petition for expedited approval of )  
implementation of a market-based )  
alternative tariff, to become effective )  
on or before May 1, 2000, pursuant to )  
Article IX and Section 16-112 of the )  
Public Utilities Act )

CHIEF CLERK'S OFFICE

Docket No. 00-0259

MIDAMERICAN ENERGY COMPANY'S OBJECTIONS TO HEARING  
EXAMINER'S PROPOSED ORDER

NOW COMES, MidAmerican Energy Company ("MidAmerican") and files its Objections to Hearing Examiner's Proposed Order ("Proposed Order") pursuant to the April 20, 2000 Notice of Hearing Examiner's Revised Scheduling Ruling ("Notice"). In said Notice, the Hearing Examiner advanced the date of issuance of the Hearing Examiner's Proposed Order in this matter from April 24, 2000 to April 21, 2000. The Notice also provided that the filing date for parties filing exceptions to the Proposed Order is April 24, 2000 by 4:00 p.m.

PROCEDURAL HISTORY OF EXPEDITED TREATMENT OF COMED'S PETITION

1. On March 31, 2000, Commonwealth Edison Company ("ComEd") initiated the instant proceeding by filing its Petition pursuant to Article IX and Section 16-112 of the Public Utilities Act requesting expedited approval of a market-based alternative tariff to the neutral fact-finder process ("Petition"). ComEd's Petition seeks expedited approval of the implementation of a market-based alternative tariff to supplant

the neutral fact-finder process described in Section 16-112 of the Public Utilities Act to be effective May 1, 2000.

2. On April 5, 2000, the Hearing Examiner issued a Notice which provided that a pre-hearing conference on this matter was to be set for April 13, 2000 at 11:30 a.m. at the offices of the Commission in Springfield, Illinois. The Notice also stated that responses to ComEd's Petition by potential parties that intended to intervene in this proceeding were to be served on ComEd, and others, by electronic mail or facsimile by 2:00 p.m., Monday, April 10, 2000.

3. On April 10, 2000, in accordance with the above-referenced Hearing Examiner's Notice, MidAmerican filed its Petition to Intervene and Comments in response to ComEd's Petition indicating that it was generally supportive of a market value based indexed tariff, however, MidAmerican had several concerns with ComEd's proposal as filed. Principally, MidAmerican expressed the following concerns with ComEd's proposal:

- (i) MidAmerican indicated it was supportive of the ComEd's efforts to develop and implement a market-value index proposal, however MidAmerican believes that ComEd's proposal is not the final word on the development of a truly market based tariff. MidAmerican stated that the Commission should approve ComEd's proposal, but with the caveat that this proposal is only an interim step towards the development of a longer term solution to establishing a market-based tariff and index pricing mechanism for the market. (See Petition to

Intervene and Comments of MidAmerican Energy Company,  
p.3)

- (ii) MidAmerican expressed concerns regarding ComEd's proposed using of forward prices for the Into ComEd Index as reported by Altrade<sup>TM</sup> (Altrade) and Bloomberg PowerMatch (Bloomberg) to establish the on-peak prices for the market value index given the thinly traded nature of these indices. MidAmerican urged the Commission to continue, without delay, the workshop process and encourage participants to move forward with an open mind about possible improvements to the current proposal.  
(Ibid., p.4)

- (iii) MidAmerican expressed concern that due to the very small volumes traded on the Altrade and Bloomberg systems and the spreads between the bid and ask prices in these markets that prices could easily be manipulated. Any party reading ComEd's tariff sheets knows the time that the "snapshots" will be taken of the Bloomberg and Altrade systems. Parties are often able to revoke bid and ask prices creating an opportunity for parties to attempt to manipulate the index price.  
MidAmerican suggested that Commission Staff should closely monitor the success and effectiveness of ComEd's proposal, as well as, monitor the Bloomberg and Altrade systems during each snapshot period for signs of price manipulation, and be

required to file a report with the Commission as to its findings.

(Ibid., p.5)

- (iv) MidAmerican expressed concern that ComEd's proposal, which uses a two-pronged approach establishing a Period A and Period B for transition charges and market values. Period A creates a seasonal market value for purposes of the Power Purchase Option (PPO) but annualizes the transition charges, creating a mismatch between the two. Since ComEd proposes to begin its annual period in the summer, the collection of transition charges is actually front-loaded. Customers are not given any benefit of the time value of money in ComEd's calculation of transition charges and essentially provide ComEd with an interest free loan. MidAmerican also expressed concern that customers assigned to Period B will pay higher transition charges than those assigned to Period A. (Ibid., p.5 and 6)
- (v) Finally, MidAmerican stated that ComEd's Petition as initially filed failed to consider that customers and retail electric suppliers may be in the midst of negotiations and forming agreements based on the currently approved and effective tariffs that may no longer be viable presuming the Commission approves ComEd's Petition. (Ibid., p.7)
- (vi) MidAmerican requested the Commission consider modifying ComEd's proposal such that current customer proposals which

have been submitted by retail electric suppliers and customer agreements which have been signed with retail electric suppliers for which service starts after the effective date of the market-based tariff, if adopted, be modified to permit these customers to have Period A customer transition charges regardless of the date the customer becomes a delivery services customer. (Ibid., p.7)

4. On April 10, 2000, the Hearing Examiner issued a Notice of Hearing Examiner's Ruling that April 11, 2000 was the mailing date for the filing of any replies in this matter by ComEd, by potential parties who had intervened and were participating in this docket, and by the Commission Staff to the responses, from potential parties and from the Commission Staff, to the scheduling proposal contained in ComEd's Petition.

5. On April 11, 2000, ComEd filed its response to the above-referenced Notice of Hearing Examiner's Ruling, and therein stated that ComEd was willing to talk with those parties who identified specific concerns in their petitions to intervene, specifically MidAmerican Energy Company, the MidWest Independent Power Suppliers Coordination Group, Illinois Industrial Energy Consumers and CMS Marketing, Trading and Services Company, to see if some or all of the aforementioned parties' concerns could be addressed. Commission Staff had requested that ComEd seek to address the foregoing parties' concerns.

6. On April 12, 2000, the Commission in conference determined that a schedule should be implemented which would result in a proposed order being provided

to the Commission by April 27, 2000 for its consideration and/or action prior to May 1, 2000 as requested by ComEd.

7. On April 13, 2000, a pre-hearing conference was held on this matter at the offices of the Commission in Springfield, Illinois. On the afternoon of that same day, the Hearing Examiner issued a Notice of Hearing Examiner's Scheduling Ruling which stated that the date for filing of any comments or statements of position by Intervenor and the Commission Staff, in response to the ComEd's Petition, prepared testimony and/or draft order is April 18, 2000.

8. On April 18, 2000, pursuant to the Hearing Examiner's Proposed Scheduling Ruling issued on April 13, 2000, MidAmerican filed its Comments to ComEd's Petition indicating that ComEd and MidAmerican had been involved in several discussions since April 12, 2000 as requested by Commission Staff in an effort to address the issues raised in MidAmerican's Comments filed on April 10, 2000. As a result of those discussions, the parties had reached an agreement, and MidAmerican was supportive of ComEd's Petition, as modified by the parties' agreement. The parties' agreement was attached as Exhibit A to MidAmerican's filed Comments

HEARING EXAMINER'S PROPOSED ORDER FAILS TO ACCOMMODATE  
FUNDAMENTAL FAIRNESS AND MIDAMERICAN'S RIGHT TO DUE PROCESS

9. As set forth above the expedited procedural schedule in this matter has been subject to a number of parties' objections, principally Illinois Industrial Energy Consumers and Enron Energy Services, Inc., on the basis that it does not adequately address parties due process rights and opportunity to have this matter fully and

appreciably dissected in a complete manner in full view of a public forum. Nonetheless, the Proposed Order states that Commission finds, based on the record in this proceeding, that there has been good cause shown to justify the Commission's expedited treatment of this matter.

10. Commission Staff had proposed that ComEd approach the parties which had expressed concerns about ComEd's proposal as initially filed on March 31, 2000 to see if those parties' concerns could be addressed thereby mitigating the harm that would be imposed on these parties by implementation of ComEd's proposal.

11. MidAmerican was approached by ComEd on or about April 12<sup>th</sup> to begin discussions to address the concerns raised in MidAmerican's Comments filed on April 10, 2000. As a result of those discussions, the parties reached an agreement which was embodied in a letter dated April 18, 2000 from Sarah J. Read, counsel for ComEd, addressed to A. Robert Lasich, counsel for MidAmerican.

12. MidAmerican attached Ms. Read's correspondence dated April 18, 2000 with its Comments, which were filed on the afternoon of April 18, 2000 pursuant to the Notice of Hearing Examiner's Scheduling Ruling issued on April 13, 2000.

13. Given the expedited procedural schedule as adopted by the Hearing Examiner's Notice of Hearing Examiner's Scheduling Ruling issued on April 13, 2000 and given the fact that both ComEd and MidAmerican were not able to reach an agreement until late Monday evening April 17, 2000, the day before Comments were to be filed, and given no subsequent hearing dates or intervening dates for conferencing of issues among the parties had been scheduled in this matter, MidAmerican was precluded

from having the opportunity to make its agreement with ComEd available to the other parties to this proceeding for their review and comment.

14. To establish an expedited procedural schedule which necessitates that parties file comments, witness testimony and affidavits in a matter of days, while at the same time the parties must continue discussions in an effort to resolve outstanding issues, then subsequently claim, that "...other parties to this proceeding . . . have had no opportunity to comment on the provisions of the 'negotiated agreements'" is fundamentally inequitable. This seems to suggest that due process and procedural rules are selectively and arbitrarily implemented and are only recognized when it is convenient and does not otherwise derail or delay the applicant's petition.

PROPOSED AGREEMENT ADDRESSES MIDAMERICAN'S CONCERNS  
EXPRESSED IN ITS COMMENTS FILED APRIL 10, 2000

15. The parties' agreement as outlined in Ms. Read's correspondence dated April 18, 2000 mitigates some of MidAmerican's concern, as expressed in its April 10<sup>th</sup> Comments filed in this proceeding.

16. In its filed Comments, MidAmerican stated that ComEd's proposal fails to consider that customers and retail electric suppliers may be in the midst of negotiations and forming agreements based on the currently approved and effective tariffs that may no longer be viable presuming the Commission approves ComEd's Petition. The parties' agreement is an effort to mitigate the harmful effect of changing the rules of the game mid-stream as MidAmerican has signed customer agreements that were not to commence service until a latter date (subsequent to the implementation of ComEd's proposed



market-based tariff) utilizing pricing under the neutral fact finder process. Further, the parties' agreement attempts to address MidAmerican's concerns regarding existing customer proposals and negotiations in which MidAmerican was currently engaged premised on a neutral fact finder methodology.

17. The parties' negotiations and subsequent agreement were in response to Commission Staff's request to ComEd, as evidenced by Commonwealth Edison Company's Response Pursuant To Hearing Examiner's Order Dated April 10, 2000 ("Response"). In its filed Response, ComEd stated "ComEd is also willing to talk with those parties who did identify specific concerns in their petitions to intervene, specifically MidAmerican Energy Company, the Midwest Independent Power Suppliers Coordination Group, IIEC and CMS Marketing, Trading and Services Company, to see if some or all of these concerns can be addressed prior to April 20, 2000 as suggested by Staff." (Commonwealth Edison Company's Response Pursuant to Hearing Examiner's Order Dated April 10, 2000, p.4, emphasis added).

**NO PARTIES ARE HARMED AND CUSTOMERS BENEFIT BY ADOPTING  
THE PARTIES' AGREEMENT AND MODIFYING COMED'S ORIGINAL  
PROPOSAL**

18. MidAmerican and CMS Marketing, Trading and Services Company (CMS) reached the same agreement with ComEd regarding modifications to ComEd's original proposal as filed on March 31, 2000.

19. Effectively, the parties' agreement extends the time period that all new customers will have for selecting to choose the power purchase option service under the

neutral fact finder valuation process (PPO-NFF). Under ComEd's original proposal, no new customers would be permitted on the old PPO-NFF after the . Under the parties' agreement, new customers can still receive service under the old PPO-NFF so long as they provide 30-day notice prior to May 1, 2000 and begin service prior to May 31, 2000.

20. The parties' agreement also extends the time period for customers selecting Rate RCDS – Retail Customer Delivery Service – Nonresidential (RCDS) to select service utilizing NFF based transition charges. Under the agreement, these same customers could also be served by NFF based wholesale supply as long as the customer was switched to RCDS service by May 31, 2000. These benefits extend to all customers, not only customers served by MidAmerican or CMS.

21. Under the parties' agreement, new customers have more time to choose their options. This is done for benefit of all customers and does not disadvantage any customers or retail electric suppliers.

#### PROPOSED CHANGES TO HEARING EXAMINER'S PROPOSED ORDER

22. In light of MidAmerican's foregoing objections to the Hearing Examiner's Proposed Order (HEPO), MidAmerican recommends and identifies the following specific changes with page citations to the HEPO with additions underlined and deletions denoted by being stricken.

(i) MidAmerican recommends the following modification to Paragraph 3, p. 18:

#### **3. MEC's and CMS Marketing's Position**

At the suggestion of Commission Staff, ComEd, in its filed Response Pursuant to Hearing Examiner's Order Dated April 10, 2000, agreed to talk with those parties who did identify specific concerns in their petitions to intervene, specifically MEC, MWIPS, IIEC and CMS Marketing, to see if some or all of the concerns raised by such parties

could be addressed prior to April 20, 2000. The filings submitted by MEC and CMS Marketing appear to indicate that each has reached the exact same negotiated agreement with ComEd as a result of those discussions. Along with its Comments filed on April 18, 2000, MEC filed a letter agreement and document summarizing the modifications agreed to by MEC and ComEd as Exhibit A. Effectively, the parties' agreement extends the time period that all new delivery services customers will have for selecting service under the power purchase option under the neutral fact finder (PPO-NFF) valuation process. Under ComEd's original proposal, no new delivery services customers would have been permitted to take service based on the old PPO-NFF valuation process. Under the parties' agreement, new delivery services customers can still receive service under the old PPO-NFF valuation process, so long as such customers provide 30-day notice to prior to May 1, 2000 and begin service prior to May 31, 2000. The agreement also extends the time period for customers selecting Rate - Retail Customer Delivery Service - Nonresidential (Rate RCDS) to select NFF based transition charges (CTC) up to May 31, 2000. Customers selecting Rate RCDS are eligible to be served with ComEd's NFF based wholesale supply service. These benefits of the parties' agreement extend to all customers, not only customers served by MidAmerican and CMS Marketing. The filings indicate that ComEd and each of these parties would be willing to accept a Commission proposed modification to ComEd's original proposal that is consistent with the modifications discussed in the filings of these parties.

The Commission first notes that the "negotiated agreements" between ComEd and these two parties have not been reviewed by the other parties to this proceeding and these other parties have had no opportunity to comment on the provisions of the "negotiated agreements." However, the benefits of the agreement will be extended to all customers, not just customers of CMS Marketing or MEC, and implementation of the proposed changes will not harm any retail electric supplier. The agreement grants additional time for customers to make PPO and CTC selections. The Commission believes the modifications will be beneficial to all customers and retail electric suppliers. In addition, the Commission notes that neither MEC nor CMS Marketing either explain what the proposed modification are or why the proposed modification should be adopted. As a result, the Commission rejects the proposed modification contained in the filings of MEC and CMS Marketing. Therefore, the Commission will accept the modifications agreed to by ComEd, CMS Marketing and MEC as evidenced by Exhibit A attached to MEC's Comments filed on April 18, 2000.

(ii) MidAmerican recommends the following new paragraph (4) be added to V. Finding And Ordering Paragraphs:

(4) ComEd is authorized to make modifications to its proposal consistent with its agreement with MEC and CMS Marketing as described in this Order.

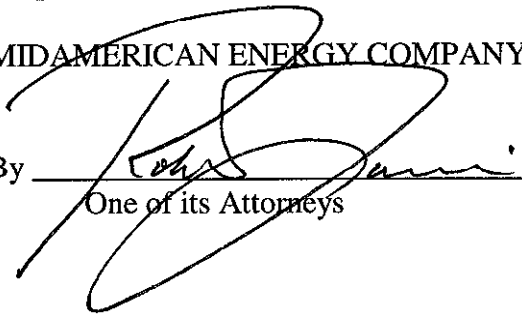
WHEREFORE, MidAmerican Energy Company respectfully files its Objections to the Hearing Examiner's Proposed Order requests the Commission give appropriate consideration to MidAmerican's Objections expressed herein.

Dated at Des Moines, Iowa, this 24th day of April, 2000.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By

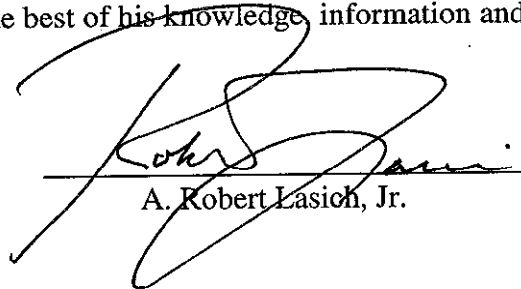
  
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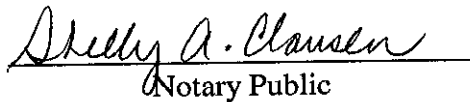
STATE OF IOWA     )  
                              )  
COUNTY OF POLK    )     ss.

VERIFICATION

A. Robert Lasich, Jr. being first duly sworn, deposes and says that he is an Attorney for MidAmerican Energy Company; that he has read the foregoing Comments of MidAmerican Energy Company and knows the contents thereof; and that the statements therein contained are true to the best of his knowledge, information and belief.

  
A. Robert Lasich, Jr.

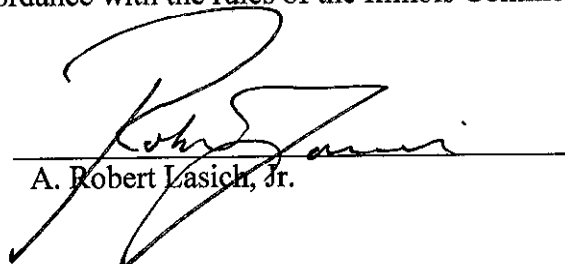
Subscribed and sworn to before me  
this 24<sup>th</sup> day of April, 2000.

  
Notary Public



## CERTIFICATE OF SERVICE

I hereby certify that on this 24<sup>th</sup> day of April 2,000, I have served a copy of the foregoing MidAmerican Energy Company's Objections to Hearing Examiner's Proposed Order, in Illinois Commerce Commission Docket No. 00-0259, upon each person listed below by electronic mail and by first-class United States mail, in accordance with the rules of the Illinois Commerce Commission.



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